

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 237 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HAFIZ KHAN UMAR DARAJ KHAN MALEK

Versus

STATE OF GUJARAT

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Appearance:

MR RAVI R TRIPATHI & Mr.A.R.Shaikh for Petitioner  
Mr.P.S.Champaneri, A.G.P. for Respondents

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 03/05/96

ORAL JUDGEMENT

Order of externment dated 28.11.95 passed by Sub-Divisional Magistrate, Dhrangadha in Externment Case no.3 of 1995, confirmed in Appeal by the Deputy Secretary, Home Department (Special) by order dated 6.2.96 is under challenge in this petition.

Petitioner was served with show cause notice

under sec.59 of the Bombay Police Act, 1951 on 30.1.95. There are as many as 14 allegations constituting offences under Chapters XVI and XVII of I.P.C. After furnishing necessary opportunity to the externnee, the order of externment came to be passed.

Said order of externment is challenged on various grounds, one of which pressed in service is that the order suffers from the vice of non-application of mind inasmuch as the authority has referred to two cases at Serial nos.1 and 2 as pending cases in the court. However, they are well disposed of long before. Criminal Case at Serial no.1 is of the year 1984 and the same has been disposed of in the very year. Another case is of the year 1994 and the same is also disposed of in the year 1994. Despite this fact, the said offences are referred to as pending in the criminal courts in the notice of January 1995. According to the learned Advocate for the petitioner, this is a sheer non-application of mind on the part of the authority and, therefore, the order is bad.

Learned A.G.P. Mr.Champaneri has contended that this contention is not raised in the memo and, therefore, the contention should not be allowed to be raised. When the contention goes to the root of the case, there is no question of not allowing to raise the same. The fact remains that in the show cause notice the two offences of the years 1984 and 1994 are referred to and that too, as pending in the court. The order of externment is also based on the said grounds of offences. Though it has been specifically referred to in reply by the externnee to the show cause notice that said cases are disposed of, yet the authority has not cared to consider the facts and has passed the order of detention. This, in my opinion, is a sheer non-application of mind while passing the order of externment. The order of externment, therefore, suffers from the vice of non-application of mind and the order is, therefore, liable to be quashed and set aside. No doubt, this contention was not raised in appeal, but as it goes to the root of the case, it does not deter this court from considering the said contention.

In view of the above state of affairs, the order of externment suffers from vice of non-application of mind inasmuch as the authority has relied on the cases, which are already disposed of, that is, non-existent, as pending and, therefore, the order is required to be quashed and set aside.

In the result, the petition is allowed. The order

of externment dated 28.11.95, confirmed in appeal, is  
quashed and set aside. Rule made absolute.

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